



RAVALLI COUNTY ATTORNEY

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TO: Bryce Christianes, Weed District Coordinator
FROM: Alex Beal, Deputy
DATE: June 11, 2007

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Ravalli County Commissioners

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RE: Potential County violation of voluntary weed control agreements

Dear Bryce,

You have asked for my opinion on a situation arising from the (attached) Ravalli County Weed District agreement. The agreement allows for a landowner, pursuant to MCA § 7-22-2153 (2005), to take responsibility for the management of noxious weeds in the areas adjoining a right of way. The agreement explicitly transfers responsibility for managing weeds in the listed rights of way from the County to the landowner. The agreement requires the land owner to indemnify the County if someone is damaged by their management. The agreement also requires the land owner to post signs labeled "START" and "END" at those respective points where their responsibility begins and ends.

You have brought to my attention a situation where a specific landowner has alleged that the County sprayed for weeds notwithstanding a signed agreement and the "START" and "END" signs. Your specific question asks what responsibility the County has to the landowner in such a situation. MCA § 7-22-2153 (2005) authorizes the board to enter into such agreements, but nothing in that statute, nor anything in the agreement specifically prohibits the County from continuing to spray, even after entering into such an agreement. Pursuant to MCA § 7-22-2115 (2005), noxious weeds are a "common nuisance." The phrase "common nuisance" is not one that pokes its head out of the law much anymore, and traditionally referred mostly to liquor and gambling. A common nuisance is something that aggrieves every member of the community, one which every member of the community has the right to abate, regardless of whether it is an immediate injury to him or her. See *Gunter v. Geary*, 1 Cal. 462, 466 (1851). Due to noxious weeds' status as a common nuisance, the County is allowed to treat them, regardless of any agreement to the contrary. The lack of a responsibility for treating the weeds does not eliminate the County's ability to do so.

This opinion is merely to the legal consequences of the matter. While it is my legal opinion that the County owes no legal duty to clean up any chemicals sprayed between the "START" and "END" signs, there are practical concerns related to long term confidence in the program that must be addressed.